

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF TEXAS  
3 HOUSTON DIVISION  
4 HOUSTON, TEXAS  
5 JUNE 6, 2019, 11:30 A.M.

6 UNITED STATES OF AMERICA . 4:19-CR-00154

7 VERSUS .

8 JUSTIN BYRD .

9 . . . . .

10 UNITED STATES OF AMERICA . 4:18-CR-00344-4

11 .

12 VERSUS .

13 .

14 JAY BENDER, M.D., .

15 . . . . .

16 TRANSCRIPT OF REARRAIGNMENTS  
17 BEFORE THE HONORABLE SIM LAKE  
18 UNITED STATES DISTRICT JUDGE

19 ***APPEARANCES***

20  
21 FOR THE GOVERNMENT IN THE BYRD CASE:

22 Jill Stotts  
23 Assistant United States Attorney  
24 1000 Louisiana  
25 Suite 2300  
Houston, Texas 77002

FOR DEFENDANT BYRD:

FOR THE GOVERNMENT IN THE BENDER CASE:

FOR DEFENDANT BENDER:

OFFICIAL COURT REPORTER:

Proceedings recorded by mechanical stenography. Transcript produced by computer-aided transcription.

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**PROCEEDINGS**

THE COURT: We have two defendants scheduled for  
rearraignment this morning.

When I call your case, please approach the bench  
and identify yourself.

United States versus Justin Byrd, Criminal Action  
H-19-154.

MS. STOTTS: Good morning, Your Honor. Jill Stotts  
for the United States.

MS. KAPER: Ashley Kaper for Mr. Byrd.

THE COURT: Could you please state your name, sir?

DEFENDANT BYRD: Justin Byrd.

THE COURT: I understand that you wish to plead guilty  
to Count Two of the superseding indictment which charges you  
with aiding and abetting brandishing of a firearm during and in  
relation to a crime of violence, in violation of Title 18,  
United States Code, Sections 924(c) (1) (A) (ii) and 2. Is that  
correct?

DEFENDANT BYRD: Yes, sir.

THE COURT: We also have United States versus Jay  
Bender, Criminal Action H-18-344.

MS. WAGNER: Good morning, Your Honor. Catherine  
Wagner for the United States.

MR. TAUSK: Good morning, Your Honor. Gene Tausk for  
Dr. Bender.

1 THE COURT: Would you please stand in front of  
2 Mr. Tausk?

3 *(Compliance)*

4 THE COURT: Could you state your name, sir?

5 DEFENDANT BENDER: Jay Bender, M.D.

6 THE COURT: I understand that you wish to plead guilty  
7 to Count Two of the indictment which charges you with  
8 conspiracy to commit wire fraud, in violation of Title 18,  
9 United States Code, Section 1349. Is that correct?

10 DEFENDANT BENDER: Yes, Your Honor.

11 THE COURT: Would both of you gentlemen please raise  
12 your right hands and be sworn?

13 *(Defendants sworn)*

14 THE COURT: If both of you gentlemen would please  
15 listen carefully. Before I can accept your guilty plea, I must  
16 ask you a number of questions. It is very important that you  
17 listen carefully to all of my questions and that you answer all  
18 of my questions truthfully and completely for several reasons.

19 First, since you are now under oath, if you gave  
20 an untrue answer to a question, you could be charged with a  
21 separate crime of perjury.

22 Do each of you understand that?

23 DEFENDANT BYRD: Yes, sir.

24 DEFENDANT BENDER: Yes, Your Honor.

25 THE COURT: Also, before I can accept your plea, I

1 must make a number of findings. My findings are based on your  
2 answers to my questions. In order for my findings to be  
3 correct, it is therefore necessary that all of your answers to  
4 my questions be truthful and complete.

5 Do each of you understand that?

6 DEFENDANT BYRD: Yes, sir.

7 DEFENDANT BENDER: Yes, Your Honor.

8 THE COURT: If you do not understand anything that I  
9 say this morning, will you agree that you will stop and ask me  
10 to repeat or explain anything that you did not understand.

11 Dr. Bender, will you agree to do that?

12 DEFENDANT BENDER: Yes, Your Honor.

13 THE COURT: And, Mr. Byrd, will you agree to do that?

14 DEFENDANT BYRD: Yes, sir.

15 THE COURT: Also, each of you may stop at any time and  
16 speak with your attorney. You do not need anyone's permission  
17 to speak with your attorney.

18 Mr. Byrd, how old are you?

19 DEFENDANT BYRD: Thirty-two.

20 THE COURT: Where were you born?

21 DEFENDANT BYRD: Houston.

22 THE COURT: Did you graduate from high school?

23 DEFENDANT BYRD: No, sir.

24 THE COURT: How many years of school did you complete?

25 DEFENDANT BYRD: Ten.

1 THE COURT: After you left school, did you receive any  
2 other type of formal training or education?

3 DEFENDANT BYRD: No, sir.

4 THE COURT: What is the last job that you held?

5 DEFENDANT BYRD: I worked at a warehouse.

6 THE COURT: What did you do there?

7 DEFENDANT BYRD: Shipping department.

8 THE COURT: Have you ever been diagnosed or treated  
9 for any type of mental problem?

10 DEFENDANT BYRD: No, sir.

11 THE COURT: Have you ever been diagnosed or treated  
12 for addiction to drugs or alcohol?

13 DEFENDANT BYRD: No, sir.

14 THE COURT: Have you taken any type of drug or  
15 medicine within the last 24 hours?

16 DEFENDANT BYRD: No, sir.

17 THE COURT: How many times have you spoken with your  
18 attorney, Ms. Kaper, about this case?

19 DEFENDANT BYRD: About four or five times.

20 THE COURT: Has she discussed with you the charges  
21 against you and what the government would have to prove to  
22 establish your guilt?

23 DEFENDANT BYRD: Yes, sir.

24 THE COURT: Has she reviewed with you the evidence  
25 that the government has against you?

11:35 1 DEFENDANT BYRD: Yes, sir.

2 THE COURT: Has she discussed with you how the federal  
3 advisory sentencing guidelines might apply in your case?

4 DEFENDANT BYRD: Yes, sir.

11:35 5 THE COURT: Has Ms. Kaper answered all of your  
6 questions?

7 DEFENDANT BYRD: Yes, sir.

8 THE COURT: Has she done everything that you have  
9 asked her to do?

11:36 10 DEFENDANT BYRD: Yes, sir.

11 THE COURT: Are you fully satisfied with the advice  
12 and counsel that Ms. Kaper has provided you?

13 DEFENDANT BYRD: Yes, sir.

14 THE COURT: Dr. Bender, how old are you?

11:36 15 DEFENDANT BENDER: Fifty-three.

16 THE COURT: Where were you born?

17 DEFENDANT BENDER: Nashville, Tennessee.

18 THE COURT: Would you briefly describe your education  
19 for me?

11:36 20 DEFENDANT BENDER: Yes, sir. I graduated high school.  
21 Graduated University of Nebraska in Lincoln, Nebraska. From  
22 that point, went to medical school at the University of  
23 Nebraska in Omaha. From that point, did a fellowship at MD  
24 Anderson Cancer Center here in Houston in pain management.

11:36 25 THE COURT: Are you licensed to practice medicine by

11:36 1 the state of Georgia?

2 DEFENDANT BENDER: Yes, sir.

3 THE COURT: Have you ever been diagnosed or treated  
4 for any type of mental problem?

11:36 5 DEFENDANT BENDER: No, sir.

6 THE COURT: Have you ever been diagnosed or treated  
7 for addiction to drugs or alcohol?

8 DEFENDANT BENDER: No, sir.

9 THE COURT: Have you taken any type of drug or  
11:37 10 medicine within the last 24 hours?

11 DEFENDANT BENDER: No, sir.

12 THE COURT: Have you consumed any alcoholic beverages  
13 within the last 24 hours?

14 DEFENDANT BENDER: No, sir.

11:37 15 THE COURT: How many times have you spoken with your  
16 attorney, Mr. Tausk, about this case?

17 DEFENDANT BENDER: Multiple times, sir.

18 THE COURT: At least 10?

19 DEFENDANT BENDER: Yes, sir.

11:37 20 THE COURT: Has he discussed with you the charges  
21 against you and what the government would have to prove to  
22 establish your guilt?

23 DEFENDANT BENDER: Yes, sir.

24 THE COURT: Has your attorney reviewed with you the  
11:37 25 evidence that the government has against you?

11:37 1 DEFENDANT BENDER: Yes, sir.

2 THE COURT: Has he discussed with you how the federal  
3 advisory sentencing guidelines might apply in your case?

4 DEFENDANT BENDER: Yes, sir.

11:37 5 THE COURT: Has your attorney answered all of your  
6 questions?

7 DEFENDANT BENDER: Yes, he has.

8 THE COURT: Has he done everything that you have asked  
9 him to do?

11:37 10 DEFENDANT BENDER: Yes, sir.

11 THE COURT: Are you fully satisfied with the advice  
12 and counsel that your attorney has provided you?

13 DEFENDANT BENDER: I am.

14 THE COURT: Now, if both of you will please listen  
11:37 15 carefully. You do not have to plead guilty. You have a right  
16 to go to trial. If you went to trial, you would have the right  
17 to the assistance of an attorney at all stages of the trial.  
18 If you could not afford an attorney, the Court could appoint an  
19 attorney for you. You would have the right to see and hear the  
11:38 20 government's witnesses at trial and have your attorney question  
21 them. You would have the right to compel other people to come  
22 into court and provide evidence for you. You would not be  
23 required to testify at a trial. And you could not be convicted  
24 at a trial unless the jury unanimously found beyond a  
11:38 25 reasonable doubt that you were guilty.

11:38 1 If you plead guilty today, however, there will  
2 not be a trial and you will give up the right to a trial and  
3 all of the protections associated with a trial.

4 Mr. Byrd, do you understand that?

11:38 5 DEFENDANT BYRD: Yes, sir, I do.

6 THE COURT: Dr. Bender, do you understand that?

7 DEFENDANT BENDER: Yes, Your Honor.

8 THE COURT: Mr. Byrd, if you plead guilty, you face a  
9 sentence of at least seven years in prison and a five-year term  
11:39 10 of supervised release and a fine of up to \$250,000 and a \$100  
11 special assessment.

12 Do you understand that?

13 DEFENDANT BYRD: Yes, sir.

14 THE COURT: Dr. Bender, if you plead guilty, you face  
11:39 15 a term of up to 20 years in prison, up to three years of  
16 supervised release, a fine of \$250,000, or twice the gain or  
17 loss, a \$100 special assessment and restitution to the victim.

18 Do you understand that?

19 DEFENDANT BENDER: Yes, Your Honor.

11:39 20 THE COURT: In addition, since the offenses you are  
21 pleading guilty to are felonies, each of you will lose the  
22 right to vote, hold public office, serve on a jury and possess  
23 a firearm.

24 The Court has not made any decision about what  
11:40 25 either of your sentences will be. If I accept your guilty

11:40 1 plea, a probation officer will interview you, investigate the  
2 facts of the case and prepare a presentence investigation  
3 report. You will have an opportunity to read the report and to  
4 discuss the report with your attorney before your sentencing.  
11:40 5 You or the government may file objections to the presentence  
6 report. At the time of your sentencing, I will rule on any  
7 objections and I will then determine your advisory guideline  
8 range and your sentence.

9 What each of you need to understand today is that  
11:40 10 this process of determining your sentence has not yet begun.  
11 That means no one knows what advisory guideline range the  
12 probation officer will recommend or what advisory guideline  
13 range the Court will find applicable or what sentence the Court  
14 will impose.

11:40 15 Mr. Byrd, do you understand that?

16 DEFENDANT BYRD: Yes, sir.

17 THE COURT: Dr. Bender, do you understand that?

18 DEFENDANT BENDER: Yes, Your Honor.

19 THE COURT: If the sentence that the Court imposes is  
11:41 20 greater than the sentence that you now expect or greater than  
21 the sentence that your attorney or anyone else may have  
22 predicted, you will be bound by your guilty plea today  
23 regardless of your sentence. You will not be allowed to change  
24 your mind and withdraw your guilty plea because you are not  
11:41 25 satisfied with your sentence.

1 Mr. Byrd, do you understand that?

2 DEFENDANT BYRD: Yes, sir.

3 THE COURT: Dr. Bender, do you understand that?

4 DEFENDANT BENDER: Yes, Your Honor.

5 THE COURT: In addition, each of you needs to

6 understand there is no parole in the federal judicial system.

7 That means you will actually have to serve in prison any

8 custodial sentence. Also, any term of supervised release will

9 be subject to a number of conditions which will be monitored by

10 a probation officer. If I found that you violated those

11 conditions, I could revoke your supervised release and send you

12 back to prison without any credit for the time you had already

13 served on supervised release.

14 Do each of you understand that?

15 DEFENDANT BENDER: Yes.

16 DEFENDANT BYRD: Yes, sir.

17 THE COURT: Mr. Byrd, the Court has been furnished a  
18 copy of a written plea agreement. Have you read the agreement?

19 DEFENDANT BYRD: Yes, sir.

20 THE COURT: When did you read it?

21 DEFENDANT BYRD: Just not too long ago.

22 THE COURT: Pardon me?

23 DEFENDANT BYRD: Just not too long ago with my lawyer.

24 THE COURT: Today or before today?

25 DEFENDANT BYRD: Today.

1 THE COURT: How much time did you spend reviewing it  
2 with your lawyer?

3 DEFENDANT BYRD: It was long enough.

4 THE COURT: Well, I don't want you telling me in the  
5 future that you only spent 10 minutes and if you would have had  
6 more time, you would have decided not to plead guilty. So give  
7 me your best estimate of how much time you spent with your  
8 lawyer talking about the agreement.

9 DEFENDANT BYRD: Well, it's been -- it's -- it was  
10 more than 10 minutes.

11 THE COURT: Was it more than 20 minutes?

12 DEFENDANT BYRD: About 30 minutes.

13 THE COURT: Was that enough time?

14 DEFENDANT BYRD: Yes, sir.

15 THE COURT: Did you read the agreement before then?

16 DEFENDANT BYRD: Yes, sir. We went through it.

17 THE COURT: And did she answer your questions?

18 DEFENDANT BYRD: Yes, sir.

19 THE COURT: All right. I want to go over the main  
20 parts of the agreement again just to be sure you understand  
21 them.

22 In paragraph 1, you agree to plead guilty to  
23 Count Two, which I described earlier. In paragraph 7, the  
24 government agrees that if your offense level is 16 or more, it  
25 will move for an additional one level downward adjustment in

1 your offense level, and the government agrees to dismiss the  
2 remaining counts at the time of your sentencing.

3 Now, other than the factual basis for your guilty  
4 plea, which I will discuss in a moment, have I accurately  
5 described your plea agreement with the government as you  
6 understand the agreement?

7 DEFENDANT BYRD: Yes, sir.

8 THE COURT: Other than what is stated in this written  
9 agreement, has the government made any promises to you in  
10 connection with your guilty plea?

11 DEFENDANT BYRD: Yes, sir.

12 THE COURT: What other promises has the government  
13 made to you?

14 DEFENDANT BYRD: That I was pleading to the firearm.

15 THE COURT: Well, I know you are going to plead to  
16 that. That's your promise to them. The government has told  
17 you that you're basically going to get a one-level downward  
18 reduction for pleading guilty and the government will move to  
19 dismiss the other count.

20 Other than those two promises, has the government  
21 made any promises to you?

22 DEFENDANT BYRD: No, sir.

23 THE COURT: Has anyone threatened you or forced you to  
24 plead guilty?

25 DEFENDANT BYRD: No, sir.

1 THE COURT: Has the government told you what sentence  
2 you will receive?

3 DEFENDANT BYRD: No, sir.

4 THE COURT: Has your lawyer told you what sentence you  
5 will receive?

6 DEFENDANT BYRD: No, sir.

7 THE COURT: What did she tell you about your sentence?

8 DEFENDANT BYRD: I can't really remember that.

9 THE COURT: What sentence do you think you are going  
10 to receive?

11 DEFENDANT BYRD: I don't know.

12 MS. KAPER: You can explain to the judge that we  
13 talked about the mandatory minimum. We know it is seven. We  
14 discussed the mandatory minimum, that's seven to life, and we  
15 have reviewed this on more than one occasion, what the penalty  
16 range is.

17 THE COURT: Is that right, Mr. Byrd?

18 DEFENDANT BYRD: Yes, sir.

19 THE COURT: Do you understand you are going to get at  
20 least seven years in prison if you plead guilty today? Do you  
21 understand that?

22 DEFENDANT BYRD: Yes, sir, I do.

23 THE COURT: All right. In order for the government to  
24 prove your guilt at trial, the government would have to show  
25 that the crime of interference with robbery by brandishing a

1 firearm was committed and that you associated with that  
2 criminal venture and purposely participated in the venture and  
3 that you sought by your action to make the venture successful.

4 In this case, the government would have to show  
5 that you and Derrick Punchard participated in a robbery and  
6 that you knowingly brandished a firearm during your robbery and  
7 that you knew that a firearm would be brandished before the  
8 robbery.

9 Now, have the victims been informed of this plea  
10 agreement?

11 MS. STOTTS: They have, Your Honor.

12 THE COURT: Have any of them expressed a willingness  
13 to be here?

14 MS. STOTTS: No, Your Honor.

15 THE COURT: Have any of them rejected the plea  
16 agreement?

17 MS. STOTTS: No, Your Honor.

18 THE COURT: Mr. Byrd, if you will turn, please, to  
19 your plea agreement to page 5. Paragraph 12 says: Defendant  
20 is pleading guilty because he is guilty of the charges  
21 contained in the superseding indictment.

22 If this case were to proceed to trial, the  
23 government could prove each element of the offense beyond a  
24 reasonable doubt. The following facts, among others, would be  
25 offered to establish the defendant's guilt.

1 On page 5 and 6, the government sets out the  
2 facts it says it could prove if your case were tried.

3 Have you carefully read pages 5 and 6 of the plea  
4 agreement?

5 MS. KAPER: I read it to him verbatim.

6 THE COURT: Is that right?

7 DEFENDANT BYRD: Yes, sir.

8 THE COURT: Did you and Mr. Punchard on or about  
9 December 6, 2018 rob the Circle K convenience store on West  
10 18th Street in Houston?

11 DEFENDANT BYRD: Yes, sir.

12 THE COURT: And did you have a gun?

13 DEFENDANT BYRD: Yes, sir.

14 THE COURT: What type of gun did you have?

15 DEFENDANT BYRD: I don't know what kind of gun it was.

16 THE COURT: What color was it?

17 DEFENDANT BYRD: It was black.

18 THE COURT: Was it a revolver or a semiautomatic?

19 DEFENDANT BYRD: Semiautomatic.

20 THE COURT: And did you point the gun at the person  
21 inside the store?

22 DEFENDANT BYRD: Yes, sir.

23 THE COURT: How do you plead to the offense charged  
24 against you? Guilty or not guilty?

25 DEFENDANT BYRD: Guilty.

1 THE COURT: Counsel, do you think any other advice of  
2 rights is required before I can accept your client's plea?

3 MS. KAPER: No, Your Honor.

4 THE COURT: The parties may now sign the plea  
5 agreement.

6 It is the finding of the Court that the defendant  
7 is fully competent and capable of entering an informed plea and  
8 that the defendant's plea of guilty is a knowing and voluntary  
9 plea supported by an independent basis in fact establishing  
10 each of the essential elements of the offense. I therefore  
11 accept your plea and now adjudge you guilty of Count Two.

12 MS. STOTTS: Your Honor, I do have a preliminary order  
13 of forfeiture with regards to the firearm that was used during  
14 this offense.

15 THE COURT: Your sentencing will be September 26 at  
16 2:00 p.m.

17 Do either counsel in Mr. Byrd's case wish to say  
18 anything else?

19 MS. STOTTS: No, Your Honor.

20 MS. KAPER: No, Your Honor. Thank you.

21 THE COURT: The defendant is remanded to the custody  
22 of the marshal, and the marshals are excused.

23 *(All parties in the Byrd case depart)*

24 THE COURT: Dr. Bender, the government has furnished  
25 the Court a copy of your plea agreement. Have you read the

11:50 1 agreement?

2 DEFENDANT BENDER: Yes, sir.

3 THE COURT: When did you read it?

4 DEFENDANT BENDER: A few weeks ago -- a couple months  
11:50 5 ago actually.

6 THE COURT: Have you discussed it with your lawyer?

7 DEFENDANT BENDER: Yes, sir.

8 THE COURT: How much time would you estimate you spent  
9 discussing it with your lawyer?

10 DEFENDANT BENDER: Well over 30 hours.

11 THE COURT: Thirty hours?

12 DEFENDANT BENDER: Maybe 20.

13 THE COURT: Okay. Did he answer all of your  
14 questions?

11:50 15 DEFENDANT BENDER: Yes, sir.

16 THE COURT: I want to go over the essential parts of  
17 it again just to be sure you understand it.

18 Do you have a copy before you?

19 MR. TAUSK: Yes, Your Honor.

11:50 20 THE COURT: In paragraph 1, you agree to plead guilty  
21 to Count Two which I described earlier.

22 If you will turn, please, to page 3.

23 Paragraph 5 says: Defendant understands and  
24 acknowledges that as a result of this plea, defendant will be  
11:51 25 excluded from participating in all federal health care

1 programs, including the Federal Employees Compensation Act and  
2 Medicare and Medicaid programs.

3 Paragraph 6 says: The parties understand this  
4 plea agreement carries the potential for a motion for departure  
5 under Section 5K1.1 of the sentencing guidelines.

6 Defendant understands and agrees that whether  
7 such a motion is filed will be determined solely by the United  
8 States Department of Justice Criminal Division Fraud Section.

9 You need to understand that what that means is,  
10 if the Criminal Division Fraud Section should decide not to  
11 file a motion for downward departure, there is nothing that you  
12 can do about that decision. Do you understand that?

13 DEFENDANT BENDER: Yes, Your Honor.

14 THE COURT: By fully cooperating, you agree to testify  
15 truthfully as a witness before any grand jury or trial jury.  
16 You agree to provide all information relating to any criminal  
17 activity known to you, including but not limited to money  
18 laundering, health care fraud and paying and receiving health  
19 care kickbacks.

20 You agree voluntarily to attend interviews and  
21 conferences requested by the government, and you agree to  
22 provide all documents in your possession or subject to your  
23 control.

24 If you will turn, please, to page 5.

25 The government agrees that in addition to the

1 two-level downward adjustment in your offense level that you  
2 will receive for pleading guilty, if your offense level is 16  
3 or more, the government will move for an additional one-level  
4 downward adjustment. The government agrees to recommend a  
5 sentence at the low end of the applicable sentencing guideline  
6 range.

7 The government agrees that if you're entitled to  
8 a 5K1 motion, the government will recommend the low end of the  
9 lower guideline range recommended in the 5K1 motion.

10 The government agrees that it will dismiss the  
11 remaining counts at the time of your sentencing.

12 Now, have I correctly described your plea  
13 agreement with the government as you understand it?

14 DEFENDANT BENDER: Yes, Your Honor.

15 THE COURT: If you will turn, please, to paragraph 22  
16 on page 12.

17 You also agree to pay restitution to the victims,  
18 and you agree that as a result of your criminal conduct, the  
19 Office of Workers Compensation suffered a monetary loss of at  
20 least 24 million.

21 In paragraphs 23 and 24, you agree and stipulate  
22 that your plea agreement supports a forfeiture of at least  
23 \$445,593.78.

24 Now, have I correctly described your agreement  
25 with the government as you understand it?

11:53 1 DEFENDANT BENDER: Yes, Your Honor.

2 THE COURT: Other than what is stated in this  
3 agreement, has the government made any promises to you in  
4 connection with your guilty plea?

11:54 5 DEFENDANT BENDER: No, sir.

6 THE COURT: Has anyone threatened you or forced you to  
7 plead guilty?

8 DEFENDANT BENDER: No, sir.

9 THE COURT: Has the government told you what sentence  
10 you will receive if you plead guilty?

11 DEFENDANT BENDER: No, sir.

12 THE COURT: Has your lawyer told you what sentence you  
13 will receive if you plead guilty?

14 DEFENDANT BENDER: No, sir.

11:54 15 THE COURT: Has anyone else told you what sentence you  
16 will receive if you plead guilty?

17 DEFENDANT BENDER: No, sir.

18 THE COURT: In order for the government to prove your  
19 guilt at trial, the government would have to show that you and  
11:54 20 at least one other person agreed to commit the crime of wire  
21 fraud and that you knew of the unlawful purpose of the  
22 agreement and joined in the agreement willfully. That is, with  
23 the intent to further that unlawful purpose. In order for the  
24 government to prove the offense of wire fraud, the government  
11:54 25 would have to show that one member of a conspiracy agreed to a

11:54 1 scheme to defraud, that is to commit health care fraud, and  
2 that the scheme involved material false representations and  
3 that you or a member of the conspiracy caused to be transmitted  
4 by wire communication in interstate commerce a writing for the  
11:55 5 purpose of executing the scheme and that you acted with a  
6 specific intent to defraud.

7 Now, if you will turn back to your plea  
8 agreement. Turn, please, to page 8.

9 Paragraph 16 says: Defendant is pleading guilty  
11:55 10 because he is guilty of the charges contained in Count Two. If  
11 this case were to proceed to trial, the United States could  
12 prove each element of the offense beyond a reasonable doubt.  
13 The following facts, among others, would be offered to  
14 establish the defendant's guilt.

11:56 15 On pages 8, 9 and 10, the government sets out the  
16 facts that it says it could prove if your case were tried.

17 Have you carefully read pages 8, 9 and 10 of the  
18 plea agreement?

19 DEFENDANT BENDER: Yes, Your Honor.

11:56 20 THE COURT: Are all the facts stated there true?

21 DEFENDANT BENDER: Yes, Your Honor.

22 THE COURT: Did you do everything described on those  
23 pages of the plea agreement?

24 DEFENDANT BENDER: Yes, Your Honor.

11:56 25 THE COURT: In particular, when you saw the patients

1 referred to you from coconspirators, did you know that they did  
2 not need the compound prescriptions that you prescribed for  
3 them?

4 DEFENDANT BENDER: Yes, Your Honor.

5 THE COURT: How do you plead to the offense charged  
6 against you in Count Two? Guilty or not guilty?

7 DEFENDANT BENDER: Guilty.

8 THE COURT: Counsel, do you think any other advice of  
9 rights is required before I can accept your client's plea?

10 MS. WAGNER: No, Your Honor.

11 MR. TAUSK: No, Your Honor.

12 THE COURT: The parties may now sign the plea  
13 agreement.

14 It is the finding of the Court that the defendant  
15 is fully competent and capable of entering an informed plea and  
16 that the defendant's plea of guilty is a knowing and voluntary  
17 plea supported by an independent basis in fact establishing  
18 each of the essential elements of the offense.

19 I therefore accept your plea and now adjudge you  
20 guilty of Count Two.

21 Your sentencing will be September 19th  
22 at 2:00 p.m.

23 Does either counsel wish to say anything else?

24 MS. WAGNER: No, Your Honor.

25 MR. TAUSK: No, Your Honor.

11:58 1 THE COURT: Any objection to the defendant remaining  
2 on supervised release?

3 MS. WAGNER: No, Your Honor.

11:58 4 THE COURT: Dr. Bender, you will remain on supervised  
5 release under the same terms as given to you by the magistrate  
6 judge.

7 DEFENDANT BENDER: Yes, sir.

8 THE COURT: Counsel are excused.

9 *(Court adjourned at 11:58 a.m.)*

10 \* \* \* \*

11 I certify that the foregoing is a correct transcript from  
12 the record of proceedings in the above-entitled cause.

13  
14 Date: April 10, 2020

15 */s/ Mayra Malone*

16 -----  
17 Mayra Malone, CSR, RMR, CRR  
18 Official Court Reporter  
19  
20  
21  
22  
23  
24  
25